

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

GLENN S. BATES,

Plaintiff,

V.

C.A. NO. 05-10489-MEL

TOWN OF HARWICH and
HARWICH POLICE DEPARTMENT,
CHRISTOPHER KENDER and
BARRY MITCHELL,

Defendants.

**PLAINTIFF GLENN BATES' OPPOSITION TO DEFENDANTS', TOWN OF
HARWICH AND HARWICH POLICE DEPARTMENT MOTION TO EXTEND
THE TRACKING ORDER TO MONDAY, DECEMBER 11, 2006 TO FILE A
MOTION FOR SUMMARY JUDGMENT LATE**

Now comes the Plaintiff, Glenn Bates, and hereby opposes the Motion to Extend the Tracking filed by Defendants, Town of Harwich and Harwich Police Department. In support of this opposition, Plaintiff states as follows:

1. Defendants have already requested, and received, an extension to the tracking order. Plaintiff did not oppose the first joint motion to extend the tracking order.
2. In the original motion to extend the scheduling order, all Defendants stated that fact discovery had been complete. Nearly six months after completing fact discovery, Defendants request an opportunity to draft their Summary Judgment Motion.
3. The online docket clearly states that the deadline for dispositive motions was November 15, 2006:

05/25/2006	Judge Morris E. Lasker : Electronic ORDER entered granting <u>29</u> Motion for Extension of Time Plaintiffs' Expert Witness List due by 7/30/2006. Defendants' Expert Witness List due 9/15/06
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		Depositive Motions due by 11/15/2006. (Howarth, George) (Entered: 05/25/2006)
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4. Plaintiff respects Defendants' able counsel, and expects that a response to Defendants' Summary Judgment Motion will require significant time and energy. The time spent by Plaintiff's counsel in answering the summary judgment will diminish the time needed to prepare for trial. Moreover, in a conversation with Attorney Charles D. Mulcahy, this attorney was informed that the moving party's Summary Judgment Motion would be similar to the one already filed by Defendant Police Officers.

5. The issue to be decided in this case is whether the Defendant Police Officers used excessive force when they shot Plaintiff. Whether the officers used excessive force is a disputed fact that is not ripe for decision on Summary Judgment.

WHEREFORE, Plaintiff requests that the Court deny Defendants motion to extend the Scheduling Order.

Respectfully submitted,

GLENN S. BATES

By his attorneys,

/s/ Gregory T. Donoghue
Timothy J. Perry (BBO#631397)
Gregory T. Donoghue (BBO#661480)
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CERTIFICATE OF SERVICE

I hereby certify that on this date a true copy of the above document was served upon counsel of record, listed below, via the Court's ECF system and by pre-paid First Class, United States Mail to those indicated as non-registered participants on November 22, 2006.

Joseph L. Tehan, Esq.
Jackie Cowin, Esq.
Kopelman and Paige, P.C.
101 Arch Street
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Charles D. Mulcahy, Esq.
Wynn & Wynn
90 New State Highway
Raynham, MA 02767

Dated: November 22, 2006

/s/ Gregory T. Donoghue
Gregory T. Donoghue